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<Insert company name>

# **Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy**

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## **1. Purpose**

[Guidance note (delete this later): This section could also directly quote from relevant parts of your business's vision, mission or values.]

<Insert company name> recognises the diversity of its workforce and understands that for the business to function optimally, all employees must be respected and valued. As such, <Insert company name> endeavours to provide employees with a safe, respectful, inclusive and flexible work environment free from all forms of discrimination, harassment, sexual harassment and bullying.

All <Insert company name> employees are required to treat others with dignity, courtesy and respect.

By implementing this policy, <Insert company name> sets out that **unlawful** discrimination, harassment, sexual harassment and bullying will **not** be tolerated. Disciplinary action, up to and including termination of employment/cessation of engagement, may be taken against employees who breach this policy.

## 2. Who this policy applies to

This policy applies to:

- **Company owners and board members;**
- **All employees** engaged by <Insert company name> in Australia, including:
  - Leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, general managers, company managers, human resources managers, managers, supervisors);
  - Production and venue personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house);
  - Full-time, part-time, seasonal, freelance and casual employees;
  - Job candidates, including people auditioning for roles;
  - Student placements, apprentices, work experience students/interns;
  - Contractors, sub-contractors and secondees;
  - Volunteers.

For the purposes of this policy, the definition of employees includes company owners and board members.

Every employee must comply with this policy as amended from time to time.

This policy forms part of and is incorporated into any employee's contract of employment or contract for service with <Insert company name>. To the extent that there is an inconsistency between the law and this policy, the law will prevail.

This policy extends to every associated entity of the company with the meaning of Section 50AAA of the *Corporations Act 2001 (Cth)*.

## 3. When this policy applies

This policy applies while the employee is at work. It also extends to work-related functions and outside of work where there is a sufficient connection to the workplace, including the following:

- The way in which <Insert company name> provides services to clients and interacts with other members of the public;

- All aspects of employment, recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport;
- On-site, off-site or after-hours work; work-related social functions (such as award nights and industry events); work related travel periods, client functions, conferences, seminars or training sessions, promotional activities – wherever and whenever employees may be as a result of their <Insert company name> duties;
- Use of social media;
- Employees’ treatment of other employees, clients, visitors and other members of the public encountered in the course of their <Insert company name> duties.

#### 4. Related documents

Employees, especially managers and supervisors, are encouraged to read this policy in conjunction with other relevant <Insert company name> policies, procedures, documents and agreements, including [Guidance note (delete this later): list relevant policies.]

- Complaint handling and investigation procedure: workplace discrimination, harassment, sexual harassment and bullying
- Code of Practice: workplace discrimination, harassment, sexual harassment and bullying
- Flexible work arrangements policy
- Pregnancy and work procedure policy
- Work health and safety policy
- Discipline procedure
- Mission, vision and values statements
- Enterprise bargaining agreements [Guidance note (delete this later): list relevant agreements.]
- Service agreement [Guidance note (delete this later): any document that outlines the rights of clients and customers to complain about the service they are receiving.]

#### 5. Anti-discrimination and workplace bullying laws

Discrimination, harassment, sexual harassment and bullying are unlawful under state/territory and federal legislation:

- *Sex Discrimination Act 1984* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth)
- *Fair Work Act 2009* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Anti-Discrimination Act 1991* (Qld)

- *Anti-Discrimination Act 1992 (NT)*
- *Anti-Discrimination Act 1998 (Tas)*
- *Equal Opportunity Act 1984 (SA)*
- *Equal Opportunity Act 1984 (WA)*
- *Equal Opportunity Act 1995 (Vic)*
- *Racial and Religious Tolerance Act 2001 (Vic)*
- *Discrimination Act 1991 (ACT)*
- *Work Health and Safety Act 2011 (NSW)*
- *Occupational Health and Safety Act 2004 (VIC)*
- *Work Health and Safety Act 2011 (QLD)*
- *Work Health and Safety Act 2012 (SA)*
- *Occupational Safety and Health Act 1984 (WA)*
- *Work Health and Safety Act 2011 (ACT)*
- *Work Health and Safety (National Uniform Legislation Act 2011 (NT)*
- *Work Health and Safety Act 2012 (TAS)*
- [Guidance note (delete this later): include relevant state/territory legislation]

## 6. Definition and examples of discrimination, harassment, sexual harassment and bullying

### 6.1 Discrimination

Discrimination is **treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law**, such as sex, age, race or disability.

It is unlawful to discriminate against someone because of a protected personal characteristic and this will not be tolerated at <Insert company name>. Protected personal characteristics under federal discrimination law include:

- A disability, disease or injury, including work-related injury;
- Parental status or status as a carer;
- Race, colour, descent, national origin or ethnic background;
- Age;
- Gender, gender identity;
- Sexual orientation;
- Industrial activity;
- Religion;
- Pregnancy and breastfeeding;
- Marital status;
- Political opinion;

- Social origin;
- Medical record;
- An association with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability.

It is also against the law to treat someone unfavourably because you assume they have a protected personal characteristic or may have it at some time in the future.

Discrimination can be either direct or indirect.

**Direct discrimination** is usually easy to identify and occurs when a person or group of people with a particular protected attribute (actual or assumed) are treated less favourably because of that attribute.

**Example: Direct discrimination**

- An employer refusing to hire someone based on their age
- One employee harasses another because of their race

**Indirect discrimination** is less obvious and occurs when a policy or practice appears neutral, yet has the effect of discriminating against those with a particular protected attribute:

**Example: Indirect discrimination**

- A policy of only offering bonuses to full time employees risks indirect discrimination on the basis of sex, as a greater proportion of part time employees are female

### What is not discrimination?

In certain circumstances it will not be unlawful discrimination to treat employees differently because of a protected personal characteristic. The main exceptions are where the discriminatory act or practice:

- Is necessary to comply with other legislation
- Is taken because the complainant cannot perform the inherent (essential) requirements of their job, even where reasonable adjustments are made
- Is a genuine occupational requirement (an exemption may be required, depending on the law in the relevant state or territory)
- Is necessary to protect health and safety
- Is permitted because an exemption or 'special measure' applies. This is often referred to as 'positive discrimination' or 'affirmative action'

## 6.2 Harassment

Harassment is **unwelcome and unsolicited behaviour** that a **reasonable person would consider to be offensive, intimidating, humiliating or threatening**.

It is unlawful to harass an individual or group because of a protected attribute (such as age, sex or race, outlined above). Harassment of any kind will not be tolerated at **<Insert company name>**. Harassment that is not related to a protected attribute is still inappropriate in the workplace and should be dealt with accordingly.

Harassment can be physical, spoken or written. It can include:

- Intimidation, verbal abuse, or repeated threats or ridicule
- Sending offensive messages by text, email or other means
- Derogatory comments
- Display of offensive materials, pictures, comments or objects
- Ridiculing someone because of their accent or English-speaking ability
- Telling offensive jokes or practical jokes based on a protected characteristic
- Belittling or teasing someone about their disability
- Isolation, segregation or humiliation based on a protected characteristic

### 6.3 Sexual harassment

Sexual harassment is **any form of unwelcome behaviour of a sexual nature, which could be expected to make a person feel offended, humiliated or intimidated.**

It is unlawful for an employee to engage in sexual harassment, or encourage or allow another employee to do so. Sexual harassment will not be tolerated at **<Insert company name>**.

Sexual harassment can be physical, spoken or written. It can include:

- Staring or leering at a person or parts of their body;
- Excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and deliberately brushing up against someone;
- Suggestive comments, jokes, conversations or innuendo;
- Insults or taunts of a sexual nature or obscene gestures;
- Intrusive questions or comments about someone's private life;
- Displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- Sending sexually explicit emails or text messages;
- Inappropriate advances on social networking sites;
- Accessing sexually explicit internet sites in the presence of others;
- Unwelcome flirting, requests for sex or repeated unwanted requests to go out on dates;
- Inappropriate or persistent unwanted gifts
- Behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

**Just because someone does not object to inappropriate behaviour in the workplace at the time, does not mean that they are consenting to the behaviour.**

**<Insert company name>**

Behaviour can still be constitute sexual harassment even if:

- It is a single incident;
- The person engaging in the behaviour did not intend to humiliate, intimidate or offend;
- Some people in the workplace are not offended by the behaviour;
- The behaviour was previously an accepted practice in the workplace.

Sexual harassment may be considered work-related even if it occurs outside of the workplace or outside of normal working hours, such as during travel, living away from home, at a conference, industry event or promotional activity or at an office social function.

All employees have the same rights and responsibilities in relation to sexual harassment.

**All incidents of sexual harassment – no matter how large or small or who is involved – should be reported to the appointed Complaints Person (refer Complaints Handling and Investigation Procedure) or relevant leadership or management position so that appropriate action can be taken.**

Where employees engage in consensual, welcome and reciprocated behaviour, this is not sexual harassment. However, appropriate professionalism is expected of all employees at all times, including in relation to employees engaging in consensual behaviour.

## 6.4 Workplace Bullying

Workplace bullying ('bullying') is where an individual or group of individuals **repeatedly behave unreasonably to another person** or group of persons **at a workplace**, which creates a **risk to health and safety**.

It is unlawful for an employee to engage in bullying, or encourage or allow another employee to do so. Bullying will not be tolerated at **<Insert company name>**.

Bullying does not need to be intentional to be unlawful. Whilst one-off incidents of unreasonable behaviour may not be considered bullying, they are still inappropriate and may constitute discrimination.

Bullying can take many forms. It can be physical, spoken, written, overt or covert. Behaviours that may constitute bullying include:

- Physical intimidation or abuse;
- Aggressive or intimidating conduct or threatening gestures;
- Manipulation, intimidation or coercion;
- Threats, abuse, offensive language, shouting or belittling;
- Innuendo, sarcasm and other forms of demeaning language;
- Ganging up;
- Public humiliation;
- Initiation activities;
- Practical jokes, teasing, or ridicule;
- Isolation, exclusion or ignoring people;

**<Insert company name>**



- Inappropriate blaming, emails/pictures/text messages;
- Unreasonable accusations or undue unconstructive criticism ;
- Allocating unpleasant, meaningless or impossible tasks;
- Placing unreasonably high work demands on selected employees;
- Deliberately withholding information, equipment, resources or support services that a person needs to do their job or access their entitlements;
- Unreasonable refusal of requests for leave, training or other workplace benefits;
- Setting unreasonable timelines or constantly changing deadlines for a specific individual or group of individuals;
- Withholding access to opportunities.

Workplace bullying does not include reasonable management action carried out in a reasonable manner. **<Insert company name>** has rights and obligations to effectively direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work to an employee and give fair and reasonable feedback on an employee's performance.

Examples of reasonable management action include:

- Setting reasonable performance goals, standards and deadlines;
- Rostering and allocating working hours where the requirements are reasonable;
- Transferring an employee for operational reasons;
- Deciding not to select an employee for promotion where a reasonable process is followed;
- Disciplinary action (including investigations) taken in a reasonable manner;
- Informing an employee about unsatisfactory work performance or inappropriate behaviour in an objective and confidential way;
- Implementing organisational changes or restructuring;
- Termination of employment.

Workplace conflict is generally not considered workplace bullying. Differences of opinion (e.g. differences in artistic direction) and disagreements in the workplace may arise without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. This is because not all conflicts or disagreements have a negative impact on health or safety. Low level, task-based conflict can benefit the company and the employees as it may generate debate leading to new ideas and innovation.

## 6.5 Victimisation

Victimisation is **subjecting or threatening to subject someone to a detriment** because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, harassment, sexual harassment, bullying or victimisation.

It is also victimisation to threaten someone (such as a witness) who may be involved in an investigation of a complaint.



It is unlawful to victimise another person. Victimisation will not be tolerated at <Insert company name>.

Victimisation is a very serious breach of this policy and is likely (depending on the severity and circumstances) to result in formal disciplinary action against the perpetrator. The perpetrator may also be subject to legal proceedings under anti-discrimination legislation and criminal law.

## 6.6 Vilification

Vilification is **any public act that incites hatred, serious contempt, or severe ridicule** against another person or group of people due to their race (including ethno-religious origin), homosexuality, transgender status and HIV/AIDS status.

Vilification is against the law in all states except the Northern Territory and will not be tolerated at <Insert company name>.

## 6.7 Breaching confidentiality

It is unacceptable for employees at <Insert company name> to talk with other employees, clients or suppliers, family or friends, or the media about any complaint of discrimination, harassment, sexual harassment or bullying.

Breaching the confidentiality of a complaint or investigation or inappropriately disclosing personal information obtained in a professional role (for example, as a manager) is a serious breach of this policy and may lead to formal disciplinary action.

## 7. Employee rights and responsibilities

All employees are entitled to:

- A workplace free from discrimination, harassment, sexual harassment and bullying;
- The right to raise issues or to make an enquiry or complaint in a reasonable and respectful manner without being victimised;
- Reasonable flexibility in working arrangements, especially where needed to accommodate family responsibilities, disability, religious beliefs or culture.

All employees must:

- Comply with the standards of behaviour outlined in this policy, the Code of Practice and other related policies;
- Treat everyone with dignity, courtesy and respect at all times;
- Offer support to people who experience discrimination, harassment, sexual harassment and bullying, such as providing information about how to make a complaint;
- Respect the confidentiality of complaint resolution procedures;
- Where applicable, assist and cooperate in the investigation of complaints made under this policy;
- Participate in training provided by <Insert company name> around workplace discrimination, harassment, sexual harassment and bullying;

- Take bystander action (if safe to do so) if they see or hear about discrimination, harassment, sexual harassment or bullying in the workplace.

## 8. Roles and responsibilities of leadership and management positions

Employees and personnel in leadership and management positions (e.g. CEOs, managing directors, executive directors, managers, general managers, heads of department, producers and line producers board members, supervisors) must also:

- Model appropriate standards of behaviour;
- Take steps to educate and make employees aware of their obligations under this policy, the Code of Practice and other related policies, and the law;
- Treat all workplaces and incidents seriously and take immediate action where a complaint is made;
- Ensure the complainant is aware that they can raise the matter with police if the allegations are of a criminal nature and that they will be provided with appropriate support to do so;
- Act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard;
- Where appropriate, help employees resolve complaints informally;
- Refer formal complaints about breaches of this policy to the appropriate Complaints Person for investigation;
- Ensure employees who raise an issue or make a complaint are not victimised;
- Ensure all employees (including bystanders) have access to support if required;
- Ensure recruitment and job selection decisions are based on merit – that is, the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics, other than where it is lawful to do so;
- Ensure no discriminatory questions are asked or requests for information are made during recruitment, unless it is directly relevant to a genuine requirement of the position;
- Reasonably consider requests for flexible work arrangements.

Furthermore, personnel in senior leadership positions (e.g. CEOs, managing directors, executive directors, managers, general managers, heads of department, producers and line producers board members, supervisors), including owners must also:

- Monitor the effectiveness of this policy, the Code of Practice and other related policies;
- Ensure the information within the policy, the Code of Practice and other related policies is relevant and up to date;
- Ensure that employees are provided with training to support them to know what discrimination, harassment, sexual harassment and bullying are and how to make a complaint or take bystander action;

- Ensure managers are provided with training on this policy, the Code of Practice, complaints process and other related policies and mechanisms to support employees to make a complaint or take bystander action;
- Ensure that an abridged version of this policy, the Code of Practice and other related policies in poster form is exhibited in prominent locations within the workplace.
- Promote this policy, the Code of Practice and other related policies throughout **<Insert company name>**.

## 8.1 Contact Person(s)

Contact Persons are available to support employees who are experiencing workplace discrimination, harassment, sexual harassment or bullying, or who need support to take bystander action.

Contact Persons are employees who have been trained to provide confidential and impartial information and support to help employees make an informed decision about how to try to resolve an issue.

Contact Persons may act as a support person to someone experiencing discrimination, harassment, sexual harassment or bullying and can provide information relating to external support services and organisational policies and procedures. Contact Persons are also able to attend mediation sessions or complaints meetings as a support person. In exceptional circumstances (e.g. where an organisation is very small), Contact Persons may also investigate complaints, provided that the Contact Person is not also acting in the capacity of a support person. It is strongly recommended that the role of Contact Person and Complaints Person is undertaken by two separate individuals to maintain impartiality.

Contact Persons cannot provide legal advice or resolve complaints; however, they can act as a support person to someone experiencing discrimination, harassment, sexual harassment or bullying, or a bystander, and can provide information relating to external support services and organisational policies and procedures.

**Refer to the Complaints Handling and Investigation Procedure for further details.**

## 8.2 Complaints Person(s)

Complaints Persons are responsible for investigating all complaints of workplace discrimination, harassment, sexual harassment, and bullying, including conducting interviews with employees and providing advice to the relevant leadership and management personnel (e.g. producers, promoters, human resources team, managers/supervisors) on the outcome of the complaint and any disciplinary measures in response to a complaint. **Refer to the Complaints Handling and Investigation Procedure for further details.**

Complaints Persons are impartial and will not have any direct relationship with the employees involved in the complaint, either as a line manager or otherwise, unless exceptional circumstances exist (as detailed in section 8.1 above)

## 9. Supporting bystander action

In order to promote a safe, equitable and respectful workplace, **<Insert company name>** encourages all employees to take action if they witness or hear about workplace discrimination, harassment, sexual harassment and bullying.

**<Insert company name>**

- **See:** Know where the line is. If you see something or hear something that makes you feel uncomfortable, don't ignore it.
- **Talk:** It takes courage to speak up. Talk with your boss, your colleagues or with the person who is crossing the line.
- **Support:** Don't underestimate the power of support. It can help a colleague stand up and take action.

For information about the sorts of bystander action employees can take, see [www.knowtheline.com.au](http://www.knowtheline.com.au).

Note that victimisation of someone taking bystander action is unlawful and will not be tolerated.

## 10. Consequences of breaching this policy

If an employee engages in discrimination, harassment, sexual harassment, bullying, vilification or victimisation, or otherwise breaches this policy, they may be subject to disciplinary action up to and including the termination of employment or engagement with **<Insert company name>**.

Employees may also be personally liable for their own behaviour or conduct. This means that when an employee undertakes discrimination, harassment, sexual harassment, bullying, vilification or victimisation, the employee may be subject to penalty or subject to an order from the regulator, the Fair Work Commission or other relevant tribunal or court.

## 11. How to make a complaint

**<Insert company name>** strongly encourages any employee who believes they have been discriminated against, harassed, sexually harassed, bullied, victimised or vilified to report this behaviour to the appointed Complaints Person, as outlined in the Complaints Handling and Investigation Procedure.

Any employee who has witnessed unlawful discrimination, harassment, sexual harassment or bullying is encouraged to report the complaint to their **<Insert relevant manager or Contact Person>** or to the Complaints Person. Managers **must** report such conduct to the producer/promoter or Complaints Person.

A complaint can be dealt with formally or informally depending on the circumstances. Management has an independent duty to respond to a complaint and take steps to address the issue, even if the employee does not wish the complaint to be made formal. In some situations there will be appropriate measures which can be taken in response to an informal complaint, such as providing refresher training, making reasonable alterations to working arrangements and/or explaining again the Policies, which do not involve intervention in the incident(s) itself. Whether a matter is dealt with informally or formally will depend on the severity of the incident.

## 12. Frivolous, vexatious or malicious complaints

**<Insert company name>** encourages the reporting of behaviour that an employee genuinely believes to be discrimination, harassment, sexual harassment, bullying, vilification or

**<Insert company name>**

victimisation. Further an employee will not be disadvantaged or treated unfairly for dealing with discrimination, harassment, sexual harassment, bullying, vilification or victimisation in accordance with this policy.

However, if a complaint is found to be frivolous, vexatious or malicious, then disciplinary action up to dismissal may occur against the person making the complaint. Examples of frivolous, vexatious or malicious complaints include:

- Fabricating a complaint;
- Making a complaint with the intention of deliberately harming someone (e.g. for the purposes of revenge);
- Making a meritless complaint to harass or sub-due someone;
- Seeking to re-agitate issues that have already been addressed or determined;
- Making a complaint against reasonable management actions;
- Making a complaint that the complainant does not genuinely believe to be true.

### 13. Additional Information, support and advice

If you have a query about this policy or need more information, please contact [Guidance note (delete this later): list contacts].

[Guidance note (delete this later): keep the below section on employee assistance programs if relevant]

<Insert company name>'s employees are entitled to a certain amount of free, professional counselling from our employee assistance program. To access the employee assistance program, contact [Guidance note (delete this later): provide contact details to access this service.]

Employee assistance program counselling is confidential and nothing discussed with a counsellor will be communicated back to <Insert company name>. Employee assistance program counselling is available free to <Insert company name> employees regardless of whether the issue is related to a workplace problem or some other issue for the employees.

### 14. Review details

This policy was adopted by <Insert company name> on [insert date].

This policy was last updated on [insert date].